

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ROBERT BATES,

Plaintiff,

Case No. 15-cv-10109

v.

Honorable Patrick J. Duggan

Magistrate Judge Elizabeth A. Stafford

OBELL WINN, et al.,

Defendants.

**ORDER (1) ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, (2) MODIFYING THE MAGISTRATE JUDGE'S
ORDER, (3) GRANTING DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT, AND (4) DISMISSING THE ACTION WITHOUT
PREJUDICE**

On October 27, 2014, pro se Plaintiff James Robert Bates, a prisoner in the custody of the Michigan Department of Corrections, instituted this prisoner's civil rights case against Defendant Obell Winn, the acting warden of the Saginaw Regional Correctional Facility, Defendant James Roth, an inspector, as well as unnamed John Doe Defendants pursuant to 42 U.S.C. § 1983, alleging that his Eighth Amendment rights were violated after he was assaulted by two inmates and subsequently denied medical treatment. The case was referred to United States

Magistrate Judge Elizabeth A. Stafford for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1).

On September 1, 2015, Magistrate Judge Stafford issued an R&R recommending that this Court grant each named Defendant's separately-filed motions for summary judgment on the basis that Plaintiff failed to administratively exhaust his claims. In her R&R, Magistrate Judge Stafford notes that because the judgment is not on the merits of Plaintiff's claims, the dismissal should be without prejudice. At the conclusion of the R&R, Magistrate Judge Stafford informed the parties that any objections to the R&R must be filed within fourteen days and that the failure to file specific objections constitutes a waiver of any further right of appeal. No objections to the R&R have been filed, and the time for doing so has expired.

Also on September 1, 2015, Magistrate Judge Stafford issued an order requiring Plaintiff to identify the John Doe Defendants by September 21, 2015, or risk the issuance of a show cause order inquiring as to why the case against the John Does should not be dismissed for want of prosecution pursuant to Federal Rule of Civil Procedure 41(a).

Having thoroughly reviewed the parties' papers, the R&R, and the order issued by Magistrate Judge Stafford, the Court concurs with the recommendation

that both Defendant Winn's and Defendant Roth's summary judgment motions be granted and that the claims against them be dismissed without prejudice. The Court, however, believes the more efficient resolution with respect to the John Does is not to issue a show cause order, but rather to dismiss them from the action without prejudice to Plaintiff.

Accordingly,

IT IS ORDERED that Magistrate Judge Stafford's R&R (ECF No. 39) is **ADOPTED**, that Defendant Winn's summary judgment motion is **GRANTED** (ECF No. 24), that Defendant Roth's summary judgment motion is **GRANTED** (ECF No. 13), and that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**.

Dated: September 23, 2015

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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Allan J. Soros, AAG
Magistrate Judge Elizabeth A. Stafford